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SECRETARY, BOARD OF
OIL, GAS & MINING

BEFORE THE BOARD OF OIL GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

In Re Petition Filed by the	:	RESPONSE OF JUMBO MINING
Division of Oil, Gas & Mining	:	COMPANY TO DOGM PETITION
for an Order Requiring Immediate	:	AND NOTICE OF AGENCY ACTION
Reclamation of the Drum Mine in	:	
Millard County, Utah By Western	:	
States Minerals Corporation and	:	Docket No. 97-009
Jumbo Mining Company.	:	Cause No. M/027/007

Pursuant to the Pre-Hearing Scheduling and Discovery Order entered in the above-entitled matter by the State of Utah Board of Oil, Gas & Mining ("the Board") on May 1, 1997 ("the Scheduling Order") and amended, on June 25, 1997, by the First Amendment to Pre-Hearing Scheduling and Discovery Order and, on July 2, 1997, by the Stipulation, Motion and Order For Second Amendment To Pre-Hearing Scheduling and Discovery Order (collectively, "the Amended Scheduling Order") and, in accordance with Rule 641-104-100, et seq. of the Utah Administrative Code, Respondent JUMBO MINING COMPANY ("Jumbo"), by and through its undersigned attorneys, hereby responds as follows to the petition of the State of Utah Division of Oil, Gas & Mining (alternatively, "the Division" or "DOGM") that is set forth in the Notice Of Agency Action dated and filed April 10, 1997 ("the petition"):

PRELIMINARY STATEMENT

In order to prevail upon its petition to require respondents

to reclaim the Drum Mine, DOGM must prove that mining operations at the Drum Mine have been suspended for a continuous period of at least five (5) years. See R647-4-117.4. Moreover, in order to proceed formally before this Board, DOGM must show that the conversion of these proceedings are in the public interest and that the proceeding will not unfairly prejudice the rights of any party.¹ See R647-5-105.1.11 and 1.12. It is respectfully submitted that DOGM cannot meet such burdens as a matter of fact and law.

In this regard, Jumbo denies each and every allegation made in DOGM's petition which asserts or implies that mining activities at the Drum Mine have been continuously suspended for more than five years past, that the Drum Mine cannot meet regulatory requirements for "operation" in its present state, that the conversion of these proceedings is in the public interest, and that the proceeding will not unfairly prejudice the rights of any party.

Moreover, Jumbo respectfully maintains that DOGM's petition has failed to even suggest any evidence that would justify reclaiming the Drum Mine at this time, or to invite the Board's

¹ Other than its bald assertion to this effect, DOGM has presented no legally cognizable basis for its conclusions. Contrary to its assertion, the public will not benefit from the conversion of the informal process to a formal hearing and the parties will be unfairly prejudiced. Taxpayer money will be spent needlessly on the hearing process and the parties will incur substantial expenses to contest this formal action. These expenses are entirely unwarranted and will amount to a significant portion of the total reclamation costs.

attention to any applicable rule or regulation that would require or even arguably justify the urged "expeditious² resolution of this matter," particularly in the face of the clearly demonstrable eventuality that Jumbo will thereby sustain a loss of millions of dollars and that the State of Utah and the surrounding community could possibly sustain an even greater loss. If this Board were to order reclamation at this time, it is certain that Jumbo would lose buildings, equipment, earthworks and related infrastructure having a value of approximately one million dollars and, as will be evident from the discussion below, available gold ore reserves of many millions more.

STATEMENT OF FACTS

Contrary to the unfounded assertions made by DOGM, mining activities at the Drum Mine have not been "in a state of suspension" or "cessation" since October 1, 1990. See Statement of the Case, Petition at 2 and paragraph 10. Although it is true that

² Even assuming a proper basis for reclamation, which does not exist here, there is no law or any applicable regulation which requires, as DOGM urges in its Statement of the Case, that a mine must be "imminently returned to an active state." See Statement of the Case, Petition at 2. Many mines have been forced to reduce their scale of operation for years, as dictated by market conditions, legal considerations, or other events. Nowhere in the regulations has this kind of reduction in scale of operation or activity been deemed to be a cause for destruction of the mining equipment and infrastructure which is required by reclamation. To the contrary, DOGM's own regulations contemplate a ten-year period of suspension of mining operations, plus possible additional time to allow for "unusual circumstances." See R647-4-117.4.

heap leaching activities at the Drum Mine were suspended on October 1, 1990, it is not true that "mining activities" were then suspended; neither is it true that "mining activities have remained suspended" since that time.³ See Petition, at ¶10. Notwithstanding the cessation of heap leaching, Jumbo has actively engaged, without interruption, in other "mining activities" since October 1990, including without limitation, surface and underground exploration and development. In addition, Jumbo is in the process of applying for a new heap leach permit, and will post additional reclamation bonding for additional mining areas at the appropriate time.

During every year since October 1990, Jumbo has been active in surface and underground exploration and development. Backhoes and bulldozers have been used to conduct exploration and development, to dig pits for exploration purposes and to locate and sample for the clay which will be required for the construction of a new heap, as well as for the accumulation of the topsoil that will be required for reclamation purposes. During this period, Jumbo has

³ In large measure, the cessation of heap leaching activities arose out of a contract dispute over reclamation responsibility between Jumbo and Western which has been the subject of very active, costly and on-going litigation in the Colorado Courts, including two phases of a bifurcated trial, cross-appeals, and cross-petitions for certiorari which are now pending decision in the Supreme Court of Colorado. But for the subjects of this litigation, heap leaching would, more than likely, have been conducted by Jumbo from October, 1990 to the present. Hopefully, after the imminent conclusion of this litigation, Jumbo will be able to resume its heap leaching activities at the Drum Mine.

drilled a total of approximately 170 exploration holes and assayed an estimated 5,000 samples for gold and other elements. All throughout this period, Jumbo has also engaged in extensive on-site drilling, sampling and pilot-scale metallurgical testing of samples, mapping, geophysical work, and other "mining operations" normal to "exploration" and "development" activities as defined by DOGM's own regulations. See R647-I-106.

Prior to the cessation of heap leaching in 1990, Jumbo paid a million dollars for the Drum Mine and spent several hundred thousand dollars more on building haulage roads, stripping waste preparatory to mining new ore, and engineering efforts aimed at obtaining permits for old heaps, and for the construction of new heaps. A pilot leaching test of more than 55,000 tons of new, crushed ore was conducted to verify gold recoveries. Western had not previously crushed the ore prior to leaching, and, as a consequence, nearly one-half of the gold originally in the ore remains unleached from the boulders and blind spots in the old heaps. In light of these considerations, despite what amounted to a forced and expensive⁴ shut-down of its heap leaching activities, Jumbo continued to actively engage in all other permissible mining operations at the Drum Mine.

As a result of this work, significant additional gold ore

⁴ As a result of the shut-down, Jumbo did not receive expected revenues. Rather, it incurred literally millions of dollars of expenses in holding costs and litigation expenses which have all but exhausted Jumbo's operating capital resources.

reserves have been discovered or inferred which will be sufficient to insure a more than viable future operation at the Drum Mine. More specifically, the recovery of more than 35,000 ounces of gold (\$12 million gross value, if sold forward at today's prices, near \$350 per ounce) from newly mined ores, as well as from crushed and reprocessed old heaps, has been assured by the detailed pilot testing, engineering, mining, and economic studies which have been completed during the last several years of Jumbo's uninterrupted and continuous mining operations.

Provided that the existing plant and facilities remain intact⁵ and can be utilized as planned, the total cost of recovery of this gold is projected to be in the range of \$200 to \$250 per ounce, including costs of building new heaps and all project reclamation. Start-up awaits only the availability of the operating capital required to build a new heap,⁶ to bond for additional reclamation,

⁵ Among other things, reclamation at this time would cause the unjustifiable destruction of buildings, machinery, equipment, and earthworks, including generators, fuel storage tanks, water and sanitary facilities, which have a replacement value exceeding \$1,000,000. These valuable assets, as well as analytical and ore testing facilities, have been used for and made possible the continued mining operations described above, in the areas of repair and maintenance, engineering, exploration and development. Roads have also been maintained to allow access for drilling and field exploration.

⁶ For some time past, Jumbo has been engaged in planning the construction of a new leach heap. In addition to Jumbo's engineers and staff, consultants have been hired to provide the detailed design and engineering work required by DWQ for a permit for a new heap large enough to hold the new gold ore reserves. This project is within a few weeks of being finished.

and to mine and crush the first 100,000 tons of ore. Thereafter, the operation will provide a very healthy cash flow from sales of the gold recovered. Jumbo anticipates that this operating capital will become available reasonably soon after the conclusion⁷ of the pending litigation with Western.

In addition to the foregoing "mining operations," for the last five years Jumbo has continuously employed a watchman/mechanic on the property to patrol the Drum Mine and to maintain Jumbo's equipment.

Jumbo has also paid substantial property taxes, claim fees and lease royalties, in excess of \$1 million, to various public agencies and land/lease owners in order to preserve intact all of the components required for a viable future operation.

Since 1990, Jumbo has also demonstrably improved the environment at the site, including, without limitation, the following specific areas:

- a) removal of buried fuel tanks left behind by Western, and certification thereof by competent authorities;
- b) removal and/or approved disposal of old fuel and reagent drums left behind by Western;
- c) sampling of existing disposal pits to prove that no hazardous wastes have been buried on the property by Jumbo, and

⁷ Experience has shown that most investors are not interested in investing in a small gold mine which is embroiled in litigation.

characterization and removal, where indicated, of other wastes left behind by Western;

d) removal of thousands of feet of old pipes from heaps, preparatory to reprocessing and/or reclamation. This type of cleanup is continuing where needed for all facilities which will not be used in the future;

e) cementing of drill holes in areas where no future mining was planned; and

f) reclamation of areas on which no future mining was planned. This included final clean up, recontouring, replacement of topsoil, and reseeding in the Monarch, Clara B, and Joy mining areas.

During the temporary shut-down of heap leaching at the Drum Mine, Jumbo has taken every reasonable action within its capabilities to preserve, maintain, and improve the gold recovery plant, facilities and ore reserves which it purchased from Western.⁸

Further, Jumbo has taken appropriate measures to insure that there has been no degradation of the environment. Notwithstanding DOGM's erroneous suggestions to the contrary, there is no evidence whatsoever of environmental degradation; nor is there any reasonable expectation that any environmental degradation or hazard

⁸ Exclusive of extant gold ore reserves, the buildings, equipment and infrastructure have a value of approximately one million dollars.

will occur if reclamation were to be delayed until the expected resumption of heap leaching at the Drum Mine.

Also contrary to the suggestions made by DOGM, there exists no evidence that Jumbo's existing operations interfere, in any way, with the limited public recreational use of this remote area. In point of fact, by maintaining access roads, Jumbo's on-going mining operations have assisted in public access to this area.

With respect to wildlife habitat, there is also no evidence to suggest that Jumbo's existing operations do anything but nurture the wildlife of the area, by maintaining water holes in this arid region and by preventing overgrazing by sheep of the areas within the Drum Mine's perimeter fences. This difference in vegetation is readily visible to any visitor who would take note of it.

In summary, Jumbo has continued without interruption since October 1990 to conduct, responsibly, a wide range of "mining activities" at the Drum Mine, other than heap leaching, all of which activities are specifically encompassed by DOGM's own definition of "mining operations." See R647-4-117.1.& 2. Indeed, it was precisely because of the conduct of such operations and the temporary nature of the suspension of heap leaching that Jumbo never made application for "an extended suspension period" as contemplated by R647-3-112. Moreover, DOGM never suggested that Jumbo should make such an application, nor that such an application

would be necessary. In fact, in all respects, DOGM has consistently dealt with Jumbo as an active mining operation.⁹

ARGUMENT

In this case, DOGM has instituted a formal proceeding by a Petition to the Board seeking an order for immediate reclamation of the Drum Mine. Rule 647-5-104 of the Utah Administrative Code sanctions the commencement of *informal* proceedings against a mine or mining operation in the interests of the public welfare. Such action is undertaken by issuing a Notice of Agency Action and its requisites under Rule 647-5-104.2, et seq.

These proceedings can be formalized to expedite the action which DOGM wishes to pursue by petition to the Board in compliance with Rule 647-5-106. Such application to the Board should be entertained under this section only if the following criteria are met: (1) the conversion is in the public interest, and (2) conversion of the proceeding does not unfairly prejudice the rights of any party. Rule 647-5-105.1.11 and 1.12.

The order from DOGM to both JUMBO and Western to reclaim the Drum mine is based on Utah Administrative Code Rule 647-4-117.4. In pertinent part, this rule provides:

⁹ Jumbo's "mining operations" at the Drum Mine were never suspended. At all times, Jumbo considered the interruption of its heap leaching to be temporary and at all times Jumbo and DOGM dealt with each other in the context of an active, albeit, somewhat impaired mining operation.

Large Mining Operations that have been approved for an extended suspension period will be reevaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a large mining operation to remain in a continued state of suspension. Reclamation of a large mining operation **may**^[10] be required after five (5) years of continuous suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds ten years, unless the operator appeals to the Board prior to the expiration of the ten (10) year period and shows good cause for a longer suspension period. [Emphasis added in bold].

In order for DOGM to succeed in its Petition to the Board, it must prove the continuous absence of "mining operations" for at least five years. Rule 647-4-117.4.

Under the Utah Administrative Code, "Large Mining Operations are defined to mean "mining operations which have a disturbed area of more than five (5) surface acres at any time." Rule 647-1-106.

"Mining operations" are further defined as:

[T]hose activities conducted on the surface of the land for the **exploration for, development of, or extraction of a mineral deposit**, including, but not limited to, surface mining and the surface effects of underground and *in situ* mining; on-site transportation, concentrating, milling, evaporation, and other primary processing. 'Mining operation' does not include: the extraction of sand, gravel, and rock aggregate; the extraction of oil and gas; the extraction of geothermal steam; smelting or refining operations; off-site

¹⁰ The rules and regulations of DOGM contemplate mandatory reclamation of a "suspended" property after 10 years, not 5 years; and, even after 10 years, these regulations provide for extensions justified by good cause.

operations and transportation; or reconnaissance activities which will not cause significant surface resource disturbance and do not involve the use of mechanized earth-moving equipment such as bulldozers, or backhoes. [Emphasis added in bold].

- Rule 647-1-106. Thus the very definitions of the terms within this rule are instrumental in determining whether there has been compliance with the rule.¹¹

"Development" means "the work performed in relation to a deposit following its discovery, but prior to and in contemplation of production mining operations. Development includes, but is not limited to, preparing the site for mining operations; further defining the ore deposit by drilling or other means; conducting pilot plant operations; and constructing roads or ancillary facilities." Emphasis added in bold; Rule 647-1-106.

"Exploration" consists of surface disturbing activities pursued in hopes of discovering deposits or mineral deposits, "delineating the boundaries of a deposit or mineral deposit," and pinpointing specific locations of potential deposits or mineral deposit existence. Id. "Exploration includes, but is not limited

¹¹ To similar effect see 43 CFR 3809.0-5(f) which provides that "Operations means all functions, work, facilities, and activities in connection with prospecting, discovery and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws and all other uses reasonably incident thereto, whether on a mining claim or not, including but not limited to the construction of roads, transmission lines, pipelines, and other means of access for support facilities across Federal lands subject to these regulations."

to, sinking shafts, tunneling, drilling holes, digging pits or cuts, building roads and other access ways." Id.

It is clear that, in accordance with these regulations, nearly all of Jumbo's above-listed activities are "mining operations." As a result, DOGM cannot prevail in its application as a matter of fact and law.

Apart from this fatal flaw, DOGM's order is predicated on Rule 647-4-117.4, which pertains to large mining operations "that have been approved for an extended suspension period." Id. Contrary to the provisions of the foregoing regulation, the Drum Mine mining operations have never been suspended for an extended period of time nor have they ever "been approved for an extended suspension period." See Id. In order to receive an official "extended suspension" the operator of a mine must, pursuant to Rule 647-4-117.3, give the Division written notice of suspension which is expected to exceed five (5) years. Rule 647-4-117.3. The Division, upon notification, must inspect the property within thirty (30) days and approve of the suspension. Id.

None of this ever occurred. Not only did Jumbo not apply for an extended suspension because of a temporary interruption of its heap leaching activity¹², but, since October, 1990, operations at

¹² Since October, 1990, Jumbo has been prevented from actively pursuing its planned leaching activities at the Drum Mine by unexpected and unavoidable circumstances. Leaching was shut down due to Jumbo's inability to get the permission of DOGM to run water sprinkling tests required by DWQ to demonstrate that two leach heaps did not leak, and thus they could not be permitted for

the Drum Mine were continuously and consistently in accord with the legally defined examples of "mining." Exploration and development have been conducted well within the five-year statutory parameters. For example, during every year since October 1990, Jumbo can show that it was active in surface and underground exploration, as well as in previously sanctioned access road development. Additionally, backhoes and bulldozers were used to facilitate this process. Further, Jumbo can also show that its activities also fit the definition of "development" during each of the past several years. Jumbo conducted drilling, sampling and testing of samples, mapping, geophysical work, and other activities normal to the exploration and development activities defined above.

To the extent that the rules of DOGM coincide with those of the BLM, or are superseded by them, Jumbo also maintains that it has never been in a mode of "non-operation" as referenced in

extended leaching, despite the fact that Jumbo had posted the full amount of additional reclamation bonding required by DOGM. Ironically, DOGM's position was that since this test sprinkling of water on the heaps was deemed to be "mining operations," Western's concurrence was required before DOGM could give its permission. Western refused to do so, seeking to force Jumbo into agreeing to modify its contract with Western so as to require Jumbo to accept all of Western's prior reclamation responsibilities, including its many and blatant permit violations. Rather than agree to such extortionate terms, and having been deprived of the cash flow from the gold which Jumbo had planned to recover from these two heaps, Jumbo shut down its leaching operations, continued its available mining operations and pursued its legal recourse in the Colorado courts. Now, having previously forced Jumbo to cease its leaching operations, DOGM seeks to force Jumbo to destroy the equipment which it purchased from Western and has not been allowed to use.

federal regulations 43 CFR 3809.3-7. Therefore, an order for reclamation is inappropriate.

In addition, any suggestion that the heaps or mining activity are futile can be shown to be untrue. Implications that the Drum Mine cannot produce sufficiently enough to be considered worthy of remaining open are inaccurate. Two expert opinions, given by professionals with an interest in purchasing portions of the Drum Mine operation will lend testimony that the heaps are, in fact, viable. Thus, forced reclamation of the Drum Mine will severely prejudice Jumbo.

Reclamation at this time would violate the stated intent of section 40-6-1 of the Utah Code, wherein "[i]t is declared to be in the public interest to foster, encourage and promote the development, production and utilization of natural resources . . . in the State of Utah in such a manner as will prevent waste." Reclamation at this time would also cause unjustifiable and completely unnecessary destruction of buildings, machinery, equipment, and earthworks which have a combined value of approximately one million dollars; the loss of untold tax revenue to the local community and the State of Utah; the equally unjustifiable and unnecessary loss of job opportunities to the local inhabitants; and the loss to local merchants of opportunities to sell materials and supplies to an active and going concern, all of which would likely be valued at many millions of dollars.

Furthermore, if reclamation were ordered by the Board, the

costs and delays incident to inevitable administrative and judicial action would be substantial to all concerned. Such further litigation would surely postpone, or worse yet, prevent entirely, Jumbo's anticipated full operation and reclamation of the property, and possibly force Jumbo into bankruptcy. Considering the many problems which will be generated for both the State and Jumbo if the Board were to order immediate reclamation, it should be apparent that this order should be denied. Reclamation at this time would be a costly mistake for all concerned. It would deprive the State of a valuable small business, and the employment and income to be derived therefrom. And it would impose, unfairly, a catastrophic loss on Jumbo.

CONCLUSION

For all of the foregoing reasons, Jumbo respectfully requests the Board to deny DOGM's petition.

Respectfully submitted,

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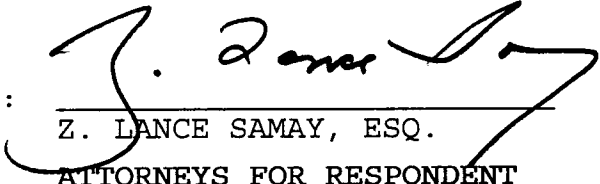

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Certificate of Service

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